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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Ervin Dennis Walter

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10/15/2009

Epic

c/o Boyle Fredrickson S.C.

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EXAMINER

RAPILLO, KRISTINE K

ART UNIT

PAPER NUMBER

3626

NOTIFICATION DATE

DELIVERY MODE

10/15/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@boylefred.com

<b>Office Action Summary</b>	<b>Application No.</b> 09/821,615	<b>Applicant(s)</b> WALTER ET AL.	
	<b>Examiner</b> KRISTINE K. RAPILLO	<b>Art Unit</b> 3626	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 71-88 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 71-88 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/25/2002; 2/7/2002; 6/17/2002; 2/3/2003;</u>                 | 6) <input type="checkbox"/> Other: _____                          |
| <u>2/18/2004; 10/26/2004; 2/14/2005; 4/7/2005.</u>                                     |   |

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## **DETAILED ACTION**

### ***Notice to Applicant***

1. This communication is in response to the amendment filed June 22, 2009. Claims 1 – 70 were previously cancelled. Claims 71 – 88 are presented for examination.

### ***Drawings***

2. The objections to the drawings are hereby withdrawn based upon the amendment filed June 22, 2009.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 71 – 88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hacker (U.S. Patent Number 6,988,075) in view of Goldenberg (U.S. Publication Number 2002/0065682 A1).

In regard to claim 71 (Previously Presented), Hacker teaches a computer system allowing patient-sourced data to be added to a clinical medical record system comprising:

a computer-implemented clinical medical record database holding clinical information created by and accessible to healthcare providers (column 7, lines 22 – 24) where Hacker discloses a medical information system that stores electronic medical records which are accessible to both patients and physicians;

a personal health web page stored on a computer-readable medium configured to allow selection of an anonymous mode or a registered mode wherein the registered mode requires machine authentication of the identity of a user and the anonymous mode does not require authentication of the identity of the user (column 8, lines 46 – 59) where Hacker discloses alphanumeric identification identifier

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and pass phrase to enter the system. Hacker fails to disclose an anonymous mode, which does not require authentication. This feature is disclosed by Goldenberg and is described below;

a computer-implemented Web portal accepting patient-sourced medical data from the patient (column 8, lines 41 – 59) and operating in one of:

(2) a registered mode in which the patient is provided with access to the patient-sourced medical data and data of the clinical medical record when the patient has registered and thus is fully identified (column 8, lines 55 – 57).

Goldenberg teaches an anonymous mode, which does not require authentication (paragraphs [0043] and [0044]) and a computer implemented Web portal operating in (1) an anonymous mode in which the patient is provided with access to the patient-sourced medical data but not data of the clinical medical record when the patient is not fully identified (paragraphs [0043] and [0044]) where a non-subscriber to the system can register as a guest, in which levels of access are granted based on the status of the guest.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include an anonymous mode, which does not require authentication and a computer implemented Web portal operating in (1) an anonymous mode in which the patient is provided with access to the patient-sourced medical data but not data of the clinical medical record when the patient is not fully identified as taught by Goldenberg, within the system of Hacker, with the motivation of providing patients and physicians a tool to review and update medical records via browser software connected to a network (abstract).

In regard to claim 72 (Previously Presented), Hacker and Goldenberg teach the computer system of claim 71. Hacker further teaches a system wherein the registered mode allows integrated access of patient-sourced data and data of the clinical medical record by the patient without re-entry of information by the patient (column 8, lines 46 – 67) where Hacker discloses access to a patient medical record which includes links to other sections (i.e. different physicians) without re-entering identification and password.

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In regard to claim 73 (Previously Presented), Hacker and Goldenberg teaches the computer system of claim 71. Hacker further teaches a system wherein the Web portal in the registered mode allows healthcare professionals to view selected patient-sourced data flagged by the patient (column 7, line 63 through column 8, line 7).

In regard to claim 74 (Previously Presented), Hacker and Goldenberg teaches the computer system of claim 71. Hacker further teaches a system wherein in the Web portal in the anonymous mode allows the patient to undertake electronic communication with healthcare professionals (column 10, lines 4 – 33). However, Hacker does not explicitly teach a system which includes an anonymous mode.

Goldenberg teaches a system including an anonymous mode (paragraphs [0043] and [0044]).

The motivation to combine the teachings of Hacker and Goldenberg is discussed in the rejection of claim 71, and incorporated herein.

In regard to claim 75 (Previously Presented), Hacker and Goldenberg teaches the computer system of claim 71.

Goldenberg further teaches a system wherein the patient provides a user name and identifying information that is anonymous in nature in the anonymous mode (paragraphs [0043] and [0044]) where a user can be an authorized guest.

The motivation to combine the teachings of Hacker and Goldenberg is discussed in the rejection of claim 71, and incorporated herein.

In regard to claim 76 (Previously Presented), Hacker and Goldenberg teaches the computer system of claim 71. Hacker further teaches a system wherein the Web portal in the anonymous mode does not permit the patient to make appointments with the healthcare professionals and the Web portal in the registered mode does allow the patient to make appointments with health care professionals (column 6, lines 38 – 40; column 8, lines 25 – 34; and, column 10, lines 4 – 18). Hacker teaches a system for

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scheduling an appointment via e-mail; because Hackers invention requires registered users to submit a identifier and password, it is inherent that a registered user can schedule appointments with a health care provider.

Method and system claims 77 - 88 repeat the subject matter of system claims 71 - 76. As the underlying processes of claims 71 - 76 have been shown to be fully disclosed by the teachings of Hacker and Goldenberg in the above rejections of claims 71 - 76; as such, these limitations (77 - 88) are rejected for the same reasons given above for claims 71 - 76 and incorporated herein.

### ***Response to Arguments***

5. Applicant's arguments filed June 22, 2009 have been fully considered but they are not persuasive. Applicant's arguments will be addressed herein below in the order in which they appear in the response filed June 22, 2009.

In regard to claims 71 and 77, the Applicant argues that neither Hacker nor Goldenberg teaches or suggests an electronic medical record created by a healthcare provider and having a patient sourced medical data portion and a medical record portion where access to the patient medical record portion requires that the user be registered, specifically that Hacker does not teach or suggest that the medical data includes a patient sourced medical data portion. The Examiner respectfully disagrees. Hacker discloses a medical information system and service which stores patient medical records on a database and allows for remote access to the records by medical providers (column 7, lines 22 – 24) which utilizes a web browser to access patient records (column 8, lines 46 – 49). Hacker further discloses patient sourced information where patient medical records may be entered into a system from other sources including patient provided medical information, such as a hard copy of prior medical history (column 6, lines 57 – 60 and column 10, lines 54 – 58). Thus, the Applicant's argument is non-persuasive and the rejection is maintained.

Also in regard to claims 71 and 77, the Applicant argues that Goldenberg does not appear to have any teaching of stored patient sourced medical data or providing such in the anonymous mode. The

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Examiner respectfully disagrees. Hacker discloses patient sourced medical data (Hacker: column 10, lines 54 – 58) and Goldenberg discloses a guest membership, which is interpreted as anonymous, and allows a non-subscriber access to the system. A user is assigned a user ID and password which keep the patient anonymous respective of the levels of access (paragraph [0042]). Thus, the Applicant's argument is non-persuasive and the rejection is maintained.

Also in regard to claim 83, the Applicant argues that the conversion option limitation is not found in claims 71 and 77 and needs to be addressed by the Examiner. The Examiner respectfully submits that Hacker discloses a web portal to access patient records (column 8, lines 46 – 49) where the patient sourced medical information (column 10, lines 54 – 58 as discussed above) is incorporated into the electronic medical record. Hacker discloses access to electronic medical record is controlled by a server set cookie or patient supplied passphrase (column 8, lines 55 – 57), which in turn enables a display screen in which a patient gains access to a physician link for web based appointment scheduling (column 9, lines 26 – 32). Thus, Hacker, who discloses web based appointment scheduling discussed above, and Goldenberg, who discloses non-subscribers access to the system, in combination would be obvious to include the function of denying non-subscribers access to web based scheduling as Goldenberg discloses various levels of access to a user (paragraphs [0030] through [0038] and paragraph [0042] through [0044]). Thus, the Applicant's argument is non-persuasive and the rejection is maintained.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KRISTINE K. RAPILLO whose telephone number is (571)270-3325. The examiner can normally be reached on Monday to Thursday 6:30 am to 4 pm Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Luke Gilligan can be reached on 571-272-6770. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KKR

/Robert Morgan/  
Primary Examiner, Art Unit 3626